IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 560 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI KALAJIBHAI KATARA

Versus

MAHESHKUMAR CHIMANLAL SHAH

Appearance:

MR JV JAPEE for Petitioner

MR AM RAVAL for Respondent No. 1

Mr S P Dave, APP for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/05/2001

ORAL JUDGEMENT

The petitioner above named being the original complainant in criminal enquiry case No.2/99 before the Sessions Court being Special Court under the Scheduled Casts & Scheduled Tribes (Prevention of Atrocities) Act,

1989) (for short, 'the Act'), Sabarkantha, has preferred this Revision Application under Section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code') for challenging the judgment and order of the learned Addl.Sessions Judge of that Court dated 18.9.1999 dismissing the said complaint of the petitioner under section 203 of the Code. The petitioner had preferred the aforesaid complaint before the said court against the contesting respondents no.1,2 and 3 for offence punishable under sections 3(1)(2)(b) of the said Act along with sections 323, 504,447,435 and 551 read with section 114 of IPC. The complaint was filed by the petitioner on 9.9.1999. The learned Judge directed that the matter may be kept for preliminary hearing on 10.9.1999 . On 10.9.1999, the learned Judge heard the petitioner-original complainant and passed an order for holding inquiry under section 202 of the Code. On going through the record, it is apparently clear that the learned Judge entertaining the said complaint and passing the said order, did nota go through the procedure laid down in section 200 of the Code. Section 200 makes it clear that the Magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. There are certain exceptions with which we are not concerned. Therefore, it was an obligatory duty and mandatory requirement under section 200 of the Code, of the learned Magistrate, to record examination on oath of the complainant. It is now well settled that when a Magistrate or a Judge passes an order for enquiry under section 202 of the Code, he takes cognizance of the offence and cognizance of the offence can be taken only on examination of the complainant on oath, and when the cognizance has been taken without such examination, then the entire procedure adopted by the learned Sessions Judge is contrary to the provisions made in Section 200 of the Code.

2. Learned Advocate for the contesting respondent has relied upon a decision of this Court in Ramaben Patel v. State of Gujarat, reported in 1992 (2) GLR 1530. There, the Court has observed that revisional jurisdiction of the court is very limited and findings of fact are not permitted to be disturbed in exercise of revisional powers unless such findings are shown to be perverse. Here, we do not disturb the findings of fact as aforesaid. Here the matter goes to the root of the case. There is a legal and jurisdictional error committed by the learned Addl.Sessions Judge, acting as a

Special Judge, when the cognizance has been taken without examination of the petitioner on oath. In that view of the matter, I am of the view that the procedure adopted by the learned Addl. Sessions Judge is illegal on the face of it and, therefore, when the procedural defect has been committed by the learned Addl.Sessions Judge, it would be the requirement of section 397 to interfere with the said order at this level and by this court. In other words, learned Addl.Sessions Judge has committed procedural error which goes to the root of the case and, therefore, when the order is based on account of such procedural defect, it would be necessary to set aside the entire proceedings subsequent to the filing of complaint. It would, therefore, be necessary to remand the matter to the Sessions Court for taking appropriate steps as if a complaint is being entertained for the first time by the court concerned. The court will take appropriate steps treating it to be a complaint before the Court and after following necessary procedure provided in law, and it will pass appropriate orders according to law. Mr S P Dave, learned APP appearing for the State agrees stating that this is the only alternative open to this Court.

3. In the aforesaid view of the matter, this Revision Application is partly allowed. The order is passed by the learned Addl.Sessions Judge acting as Special Judge under the said Act, right from the beginning for holding the enquiry under section 202 of the Code are quashed and set aside. The matter is remanded to the said court for treating the complaint as a complaint before the Court. The Court will be at liberty to take appropriate steps on the said complaint in accordance with law. It is made clear that this court has not entered into the factual aspects on merits arriving at the aforesaid decision. Rule is made absolute to that extent.

01.5.2001 [D P Buch, J.]
msp